

**OPINION  
45-69**

May 7, 1945            (OPINION)

CONDITIONAL SALES CONTRACTS

RE: Not Required to be Notarized

I acknowledge your letter of May 3, in which you raise the question whether a conditional sales contract to be filed in the office of the register of deeds must contain an acknowledgment of the receipt of a copy of the contract, signed by the purchaser, as is required in the case of a chattel mortgage.

Section 51-0121 authorizes the reservation of right of possession or property in goods until certain conditions are fulfilled.

Section 51-0710 of the 1943 Revised Code provides:

"All reservations of the title to personal property, as security for the purchase money thereof, when the possession of such property is delivered to the vendee, shall be void as to subsequent creditors without notice, and purchasers and encumbrancers in good faith and for value, unless such reservation is in writing and is filed the same as a mortgage of personal property. In indexing such instruments, the register of deeds shall treat the purchaser as mortgagor and the vendor as mortgagee."

There is no direct requirement in the statutes as to how a conditional sales contract must be executed to be entitled to be filed. But, inasmuch as the statute refers to them being filed as a chattel mortgage, I think it is a proper precaution, and I would advise, that in all cases where it is determined to use them and to file them, that they be executed as a chattel mortgage is required to be executed; that is, witnessed by two witnesses or acknowledged. There is no requirement in the statute that the purchaser acknowledge the receipt of a copy of the contract. No specific mention is made of that requirement in any statute that I am aware of at this time. Accordingly, it is the opinion of this office that if a conditional sales contract is witnessed by two witnesses or acknowledged, and is therefore entitled to be filed in the office of the register of deeds, that is sufficient. All the statute seems to require is that such contracts be filed the same as a mortgage of personal property, and in indexing the instrument, the register of deeds shall treat the purchaser as mortgagor and the vendor as mortgagee. If the register of deeds, therefore, follows the statute with reference to that requirement, that is as far as he needs to go.

As you are well aware of, even without an acknowledgement of the receipt of a chattel mortgage, the same has been held valid between the parties. A conditional sales contract in writing, which was entitled to filing and was filed, constitutes notice. There is no requirement that such contract contain an acknowledgement of the receipt of a copy.

NELS G. JOHNSON

Attorney General